



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Ernest A. Cost--Reconsideration  
File: B-248069.2; B-248070.2; B-248071.2  
Date: May 4, 1992

Ernest A. Cost for the protester.  
Michael R. Golden, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Where agency advises protester that he has been proposed for debarment and that, pending the debarment action, he is precluded from receiving awards under solicitations for which he previously has submitted offers, protest of agency's failure to further consider his offers because of proposed debarment action must be filed within 10 working days of receipt of notice of proposed debarment that precludes him from award under the current solicitations.

### DECISION

Ernest Cost requests reconsideration of our dismissal of his protests of the Air Force's refusal to consider his offers under request for proposals (RFP) Nos. E63197-92-R001 ((001)), E63197-92-R002 ((002)), and E63197-92-R003 ((003)). We dismissed Cost's protests as untimely because they were filed more than 10 working days after the protester knew, or should have known, of the basis for his protest.

We affirm the dismissal.

The original protest submissions dated and filed on March 24, 1992, showed that on March 4, 1992, by letter, the Air Force advised Cost of the Air Force's proposed debarment action against Cost, and that pending the debarment action he was precluded from receiving awards or being solicited for contracts. The Air Force letter also explained the reasons for the debarment action. Cost objected to the proposed debarment action and his consequent ineligibility for award under current solicitations for which he had submitted offers. Since Cost's protest was not filed within 10 working days of his receipt of the Air Force letter on March 4 notifying him of the proposed debarment, we dismissed the protest as untimely.

(Cost now explains, for the first time, that he did not protest earlier than March 24 because it was not until March 23 that Cost discovered that IREP No. 003 previously had been issued and that amendments to IREP No. 001 had been issued but had not been sent to Cost. Cost does not provide any additional information regarding the timeliness of his protest concerning IREP No. 002. In his original protest, Cost stated that he had submitted an offer under IREP No. 002 on December 1991, and that he "suspect[ed] that I am the low offeror."

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1992), protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. Cost protested that the proposed debarment action is improper and therefore that he improperly was precluded from receiving any awards under the solicitations for which he had previously submitted offers. Cost was aware of the proposed debarment and the basis for it on March 4. Cost should also have been aware from the Air Force's letter that he would not be considered for award under IREP Nos. 001 and 002 and would not be solicited under any future IREPs.<sup>1</sup> Thus, we properly concluded that Cost's protest filed more than 10 working days after receipt of the March 4 letter was untimely.

*Ronald Berger*

Ronald Berger  
Associate General Counsel

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<sup>1</sup>While Cost protested IREP No. 003 in his original submission, Cost did not advise us, as he now does in his reconsideration request, that he only became aware of the existence of IREP No. 003 on March 23. We reasonably believed from his letter that this solicitation, as well as the others, had been issued prior to March 4. Protesters are not permitted to introduce for the first time in a request for reconsideration the information upon which the timeliness of the protest relies. 4 C.F.R. § 21.1(e).